

THE MARTHA'S VINEYARD COMMISSION

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MARTHA'S VINEYARD COMMISSION MINUTES OF MAY 5, 1988 MEETING

The Martha's Vineyard Commission held a Special Meeting of the Commission on Thursday, May 5, 1988 at 8:00 P.M. at the Old Whaling Church, Main Street, Edgartown, MA.

Item #1 - Minutes of April 21, 1988.

Mr. Early stated that at the last meeting there was some discussion about the exact wording of the matter of the two wheel vehicle parking provisions in the Norman Rankow DRI. And stated the Commissioners now have available verbatim from meeting tapes and stated that the relevant part is on page three. Carol Borer, stated that she has underlined the parts that have been inserted in the minutes for Commissioners review.

Following individual review there was a motion to approve the Minutes of April 21, 1988. Seconded. The motion carried with one abstention (Custer).

Item #2 Possible Vote

Written Decision - Norman Rankow DRI

Motion to approve the Norman Rankow Draft Decision. Seconded.

Mr. Early asked if there was any discussion?

Mr. Widdiss expressed concern about the 2 wheel vehicle parking area not being addressed within the decision. Mrs. Borer stated this is not within the Decision and explained the summarized minutes, as approved, are incorporated in the Decision. She further noted that this discussion can be heard on the tape. Ann Skiver, showing the site plan to Mr. Widdiss, explained to him where this area could be located.

Mr. Morgan stated the Commission did not vote on a condition regarding this subject and questioned the reasons for belaboring this issue any longer as it is mute.

Following Ann Skiver's explanation, Mr. Widdiss felt he had the information which was needed.

On a roll call vote the motion carried with a vote of 9 in favor, 3 opposed and 5 abstentions (Custer, Wey, Ewing, McCavitt, Early) + A. Harney abstained.

Item #3 - To discuss the Final Environmental Impact Report for

Nobnocket (MVY Realty Trust)

Mr. Early stated the purpose of this discussion is to determine whether the Final Environmental Impact Report discloses environmental effects not previously disclosed to the Martha's Vineyard Commission, and, if so, to determine whether a public hearing should be held to decide whether the Commission's Nobnocket Decision should be modified in response to those previously undisclosed effects.

Mr. Early then introduced Mr. Eric Wodlinger, Esquire, of Choate, Hall & Stewart - MVC Legal Counsel and from Rizzo Associates are Barry Pell and Rick Moore. He explained that Rizzo Associates have been engaged by the Commission to evaluate the Draft EIR and the Final EIR.

Mr. Early then made a brief statement explaining that this is a public meeting not a public hearing, as usual procedure for DRI discussion this discussion is for Commissioners, Counsel and Rizzo Associates only. Copies of reports are distributed to Commissioners. Next week we propose to have a vote if there is anything in these reports that indicates new disclosure of environmental effects from the MEPA process that has not been disclosed. He then asked Rizzo Associates to make their presentation.

Barry Pell, Director of Transportation for Rizzo Associates and a registered professional engineer, stated they have been engaged by the MVC to review both the EIR documents and with regard to traffic their findings are the FEIR does not reveal any new environmental issues but has instead provided some additional specific information in identifying impacts. He stated the FEIR provides a methodology for concerns expressed regarding bicycles and mopeds. Mr. Pell stated this methodology has been reviewed by his firm and their findings are that is sound and reasonable in the approach used. While there might be issues with some of the specific factors and parameters applied for the analysis, the overall analysis is creditable and feel any differences are not a major issue. He then concluded that Rizzo feels the report has not identified new governmental effects.. He then asked Rick Moore, of Rizzo Staff to speak.

Rick Moore, Director of the Environmental Engineering Group Vice President and Registered Professional Engineer for Rizzo, stated there are two issues: traffic which has been addressed and impact of the site on groundwater. He stated there are three issues discussed in the initial EIR and the Final EIR having to do with the impact of the 2 septic systems to groundwater and the impact of stormwater runoff on groundwater and essentially the existing condition and quality of groundwater and any potential problems typically called an EIR Hazardous Waste problem, which is due to essentially the current situation there. He stated there is nothing in the Draft or Final EIR that were new issues that weren't discussed previously and basically the final EIR elaborated on the draft and gave some information to support their conclusions in terms of impacts. Mr. Moore stated that his firm has made several comments relating to the operation of the facility and how the operation in the future will continue not to be degrading and this has been addressed through a suggested 5 well monitoring program over the life of the facility and controls which would trigger any action on the part of the developer. He stated this was included in the decision of the MVC and elaborated on by his firm. Mr. Moore stated the second area was the operation and

maintenance of the existing facility i.e. cleaning out the catch basins, cleaning out the septic systems and routine operations. The third thing has to be done regardless of what is put on site which is remedial action as a result of contamination on site right now. He stated data was presented in the Draft EIR and additional data on groundwater in the Final EIR were another round of groundwater samples which confirmed the original conclusion that there was some indication that there was an underground fuel tank on-site which might have leaked some products and that it should be removed and the soil around it should be tested and if contaminated that should also be removed in addition to continued monitoring of the site as there is a landfill upgradient to the site. Finally he stated that soil samples could not be measured under the existing building foundation, however this will be done once and if construction occurs on site. He said to summarize, the issue of groundwater in three impacts are: septic systems, stormwater, and hazardous waste issues the only new information in the final EIR is additional groundwater sampling done which tends to confirm the previous conclusions.

Mr. Early asked if Commissioners had any questions.

Mr. James Young questioned the validity of traffic figures given is at issue, specifically the convenience store allegation by the applicants and source (ITE Land Use Code 850) and asked if it is within Rizzo's scope to say if this is an appropriate methodology? Mr. Pell stated the analysis assumes that the market will generate trips as a conventional supermarket and applies use to transportation factors in that regard. Therefore these numbers, as applied by their consultant, are reasonable and the issue that follows is also reasonable. He said if, however, the market eventually operates more like a convenience market with a higher trip generation, then the degrees to which it is not a supermarket might increase the mitigations which will be required.

Mr. Young further asked what makes Cronig's supermarket not a supermarket. Mr. Pell answered it is eventually the number of vehicles stemming from the types of products for sale and the hours of operation. Mr. Young stated that he feels that Cronig's figures should have been used rather than a national formula and stated he believes if that had been done the vehicle trips would be 941 as opposed to 241.

Mr. McCavitt asked if the police control mitigation measures are accepted by ITE as a mitigative measure? Mr. Pell answered that ITE does not specifically describe police control but does discuss approaches to create gaps in traffic to allow entering and exiting such as traffic lights. Mr. McCavitt asked without any police control would the traffic in this area be acceptable. Mr. Pell stated this is a mitigative technique and is a reasonable/conventional technique if this mitigative technique fell through, standards for traffic flow would be unreasonable and an alternative measure would be needed.

Mrs. Custer discussed the history of signalization in Tisbury regarding the DPW determination of 5 corners stating the town has been advised that the traffic impacts are not severe enough to warrant signalization. She further stated that the Town does accept a financial donation from the SSA for traffic control at the five corners, however it was seen at Town Meeting last night the reluctance

to accept offers. She stated that she sees the Town being in a dilemma and has to come to how to afford the cost of traffic control.

Mr. Filley asked Mr. Pell for explanation regarding what is meant by background growth? Mr. Pell responded that this is included in studies to try to assess what is going to happen on roadways including other developments in the future. He stated that factors are usually future development along with historic trends typically through the year of development.

Mr. Filley stated this does not go into the life of the project. Mr. Pell answered in the negative. Mr. Filley asked if there is an analysis that goes through the life of the project. Mr. Pell answered typically not unless there is a different design for the analysis as would be specified by the Secretary.

Mr. McCavitt asked Mr. Pell if he has had a chance to review comments from the Secretary of Traffic of the Commonwealth and if so asked if he had any opinion of his comments. Mr. Pell answered in the affirmative and stated that most significant comments related to trip generation and stated that the wide generation of trips could have an impact on the mitigative measures given the proposal and supermarket trip generation. The mitigation and methodology is a sound one however mitigation measures may have to be expanded upon which could mean longer police control.

Mr. Young looking at the EOTC assessment for explanation of impulse rates and how they apply to this project. Mr. Pell stated impulse rates are actually a capital or urban factor. The concept referring to the fact that many people making the retail trips do not in fact, during peak time, make new trips but on their way home from work will be diverted therefore rather than being a new trip it is part of the existing traffic volume and instead of being a through trip it is a turn into the site therefore diverting traffic. He said that this concept has been studied for approximately a decade on a national basis and has in fact been suggested by Trip Generation Manual as a bonafide concept.

Mr. Young stated that the Secretary of Transportation points out that they have chosen a higher percentage rate then initially chosen therefore indicating there would be a lower impact on the road system. Mr. Pell stated it would be difficult for him to suggest an appropriate number however, suggested with diversion during peak hours could be 20, 30 or 40%. Mr. Young stated that he believes the Secretary notes that trucks and buses are not included in the counts therefore because they were not counted the applicant came up with a different figure? Mr. Pell answered in the affirmative and stated that he is not sure if the numbers during peak hours are significant.

Mrs. Eber asked, while calculating peak hour traffic if traffic off the boat has been calculated? Mr. Pell stated he did not do the calculations, that the task with the MVC is to review what counts have been done by the consultants for the developers. He stated the methodology used, which was to take a count at a particular time of the year, varies to expanded according to growth factors for the count stations at other locations and also peak day August during the high part of the season that type of methodology is a standard and appropriate one in order to ascertain the maximum counts. He stated

if a ratio was made between traffic in August and the June counts the ratio of the August count presumably included that traffic flow.

Mrs. Eber further questioned consideration of influx. Mr. Pell stated it was included in the daily counts that were sampled in August and believes that count would have included any impact daily. He stated that there were limited time, 5 or 10 minutes, taken and seasonal and monthly variations were included.

Sanford Evans, stated he is confused with as to what would signal new information to you. The impression that this has been reviewed in an in-house way, at your desk, a report prepared by the applicant and your looking for additional information in their report as required by the State that did not appear. So far I understand that your review indicates their methodology was the same in the report as presented at the MVC hearing and that whether or not the ratios, numbers, and percentages are libel to be different under different analysis is not part of your review. He questioned whether Cronig's is a convenience store or a supermarket and if Mr. Pell had ever been to Cronig's and how long a police officer would be required 5 or 25 hours per week.

Mr. Pell - is new information that has been provided by the consultant but if your suggesting as to whether we evaluated whether the trips rates they are using are the appropriate ones or whether the fact we study their analysis to come up with our own independent conclusions, we examined the documents for consistency with the MVC Decision and looked for environmental effects not previously disclosed. Yes, I have shopped in Cronigs.

Mr. Evans stated this means it would not be possible to know whether or not their actual number of loading or the amount of time a police officer might be needed and no way of determining this. Mr. Pell answered in the affirmative this contract was not to form an independent study to determine the impacts of this project.

Mr. Early stated that Eric Wodlinger, MVC Counsel, would like to comment.

Eric Wodlinger, stated for the benefit of the Commissioners that the MEPA process is to find any flaws in an applicants traffic and environmental analysis. The condition which was attached to the decision called for review of the information that was brought out in the MEPA analysis. You will recall that after the Draft EIR was filed notice was given in the Environmental Monitor and people were invited to submit comments and many did so. The form of the MEPA process is designed to give everyone a chance to criticize or point out flaws in a developer's project and what we had hoped to do by the condition attached in the decision was to have the benefit of the Secretary's review, the Secretary will not certify an EIR as adequate unless he feels that after having been tested by comments of the public and review of his own MEPA office he feels that the EIR adequately discloses the Environmental Impacts so this condition was designed to piggy-back on the efforts by the Secretary of EOEA and as indicated by Rizzo's representatives they were charged to review the materials in the MEPA process compare them to the information that had been brought out in front of the Commission when it had the DRI decision before it and advise the Commission if any information or significant findings had been missed in the course of the Commission's review, so if any significant environmental effects were spotted in the course of the MEPA process, the Commission would have the chance to modify its

decision to take those into account. In fairness to Rizzo, within the scope of the budget allotted to them, it was not an assignment to do independent research. The design in drafting the condition was to get the benefit of the work of the Secretary.

Mr. Ewing stated he did not notice in the study if the delay factor had been considered. Mr. Pell stated in the analysis by the level of service, there are levels of service confirmations which is the concept used which describes the quality of driving conditions (best and worse and something in between c or d being acceptable). Each of those letter categories is associated itself with a possible delay and then by determining what the level of service will be the various movements i.e. turning movements - entering and exiting the site, and compare that letter with what the category is for the letter.

Mr. Ewing asked if Mr. Pell knew, during peak hours, what the longest delay would be going straight by the project? Mr. Pell stated that particular piece of information is not included in the report. Mr. Ewing further asked if this is an important piece of information? Mr. Pell stated underlining the analysis for uncontrolled intersection, which would be the case now, the presumption is there is no delay, that the through has the right-of-way to proceed to move through the intersection in a reasonable way, under the situation using mitigation, using police officer, at those times there obviously will be a delay when all through traffic is stopped. I think that an important factor is one that it is represented by the level of service for that intersection at that operation. Mr. Ewing asked the number of minutes of delay one would be caused driving to Lambert's Cove during peak time. Mr. Pell states that this is not known because the analysis speaks to delay only at the intersection of the project, which is 3/4 of the scope that MEPA asked for to be evaluated but for the entire stretch how much time can be anticipated is not known.

Mr. McCavitt - in respect to the above he referenced a letter from Rizzo Associates to Carol Borer, MVC dated November 17, 1988 - item number 2 having to do with Level of service b and e.

Mr. Pell stated this is somewhat a technical point but there are different levels of service categories depending on whether you're describing an intersection that is signalized, unsignalized or for that matter a roadway segment and there are different parameters that result in selection of the appropriate level of service depending on what type of roadway operation evaluated. The point in number two which was being brought out to the Commission was the matter of the condition whereby the consultants have been working with a table of level service category that were applicable to an unsignalized intersection geared for their report. For this issue they had been speaking about the capacity of Holmes Hole Road and State Road along with others. They then jumped to evaluating the capacity at a roadway segment cross section away from any intersection which has a different method of evaluation, different parameters for defining what that level of service is. The specific parameters of defining a level of service to a roadway segment as opposed to an intersection is to take the volume on the road and divide it by the capacity of the road to get a ratio and depending on what the ratio is then define the level of service. The volume to capacity, as it is called ratio for that particular operation in the DEIR was an noted .77. This means if the

capacity of the road is x that the predicted operation during peak period would use 77% of the available x capacity. That number .77 is into the range for definition of runover service roadway segments that is referred to in the E level services.

Sanford Evans - On that point you have mentioned, because there was not a pulse analysis done with several times within an hour there might be a level of service that is a volume to capacity ratio which might well exceed .77 and therefore going beyond E. And suggested that actual experience using this road is that the average that apparently are being referred to in all this analysis, is an average of tremendous loading and lightning and tremendous loading again several times an hour because of our ferry and therefore asked if the analysis within the report reflects reality.

Mr. Pell - That is not exactly true. The reason is the analysis methodology uses 15 minute count periods and there is something referred to as a peaking factor which tries to take into consideration the pulse during the 15 minute interval and increases the volume perhaps not to analyze it just for that 15 minute interval but is not simply the other way of taking the average and averaging out all the highs and lows. And favors to some degree the fact that there is screening during 15 minute intervals where traffic might increase and this is done ultimately by increasing the hourly volume counted during peak volume times and was done in the analysis. This is the methodology and stated this is a more conservative approach.

Marie Scott, addressing the letter from Rizzo Associates dated November 17, 1987 stated section 3 states that the rates calculated were based on data obtained in Trip Generation Report and further states a subsequent study by ITE recommended trips for drive-in banks at a different rate showing a 25% to 50% difference and asked which was used in the FEIR? Mr. Pell stated the first report was used. He stated he would also mention that every so often, depending on the number of studies done, the ITE issues a new trip generation manual. It so happens that during the time of the DEIR and FEIR a new addition was issued. He stated the supermarket rates have not changed and stated that he is not familiar whether in fact the bank rates have changed to reflect the new information that were for example referenced here in the ITE Journal. In effect what the new addition does is take into effect all studies which have been done and decides to use in some fashion what they determine to be valid statistically and comes up with rates. He stated during review of the FEIR he checked with consistency with what was done and is also not sure of new information and rates for the bank facility.

Mr. Early stated there is no new staff information at this time.

Eric Wodlinger, Counsel, stated that the citizens of Martha's Vineyard always have a right to petition their government concerning their grievances. This is guaranteed by the Constitution. However, when a matter is involved in litigation, it is sometimes advisable for the Martha's Vineyard Commission as an entity and for its Commissioners as individuals to decline comment on a matter until the litigation is finished. In addition, when acting upon Development of Regional Impact Application, the Commission is acting in a "quasi-judicial" capacity. Consequently, in order to maintain both the appearance and the substance of fair procedures, it is preferable that communications to the Commission be addressed to the Commission

as a whole and become part of the record on an application. Comments or letters can be given to the Commission at a public hearing or may be submitted in writing to the Commission offices. In this fashion, all the Commissioners will learn of the comments and all the Commissioners will be acting on the same information in the record. In contrast, when the Commission is acting in a "quasi-legislative" capacity, such as voting on new Regulations, comments may be freely directed to individual Commissioners, although there is still some benefit in submitting them to the Commission as a whole so that all of the Commissioners will have a chance to review citizen input.

These procedures are necessary to safeguard the rights of both applicants and opponents of any particular DRI project and to assure the regularity and openness of the Commission's procedures. Any suggestions that Commissioners are being "gagged" or that citizens are not allowed to speak to the Commissioners is simply misleading. In carrying out its statutory purpose, the Commission must abide by regular procedures designed to safeguard the rights of all parties appearing before it. This is even more the case when a particular project is involved in litigation. The Commission welcomes comments from citizens and will insure that any comments received receive full and careful review by all of the Commissioners. On a second and unrelated point, certain allegations have been made about conflicts of interest arising amount the Commission in regard to this project. We are looking into these conflicts of interest, our preliminary indications do not disclose that any Commissioners has a financial interest in MVY Realty Trust, in the beneficiaries of the Trust or in the MV National Bank. In order to avoid even the appearance of impropriety full disclosure forms will be filed by the Commissioners, I expect many of this forms will disclose savings accounts, credit card accounts, home mortgages with MV National Bank and stated that he does not find that any of these will constitute violation of Chapter 268A of the general laws. These disclosure reports will be available for public inspection.

Mr. Early asked if Commissioners had any questions for Mr. Wodlinger?

Mr. Young asked if he understood that Commissioners as elected officials should not discuss with constituents DRI's pending before the Board. Mr. Wodlinger, stated all discussions regarding a pending DRI are preferably heard before the full Commission. If a constituent wishes to submit comments to the Commission you should encourage them to do so either in person at a public hearing or in writing so that staff can distribute them. If an applicant or opponent of a project feels there has been ex parte communications with Commissioners who will be voting on a particular project, up or down, some sense will be generated that equal access has not been given to all parties. This way the appearance of impropriety will be avoided.

Mr. Widdiss expressed his concern regarding allegations made and the filing of the disclosure statements stating: "I just wanted to submit my disclosure right now, I think any-one out there that thinks there are any conflicts on this Commission does not know these people, I am getting pretty upset with what I read in the paper. These people are giving their time and effort. If anybody thinks that anybody on this Commission can be bought by anybody for any amount of money they are barking up the wrong tree." Mr. Early stated others feel the same

way however, this will protect the integrity of the Commission. Mr. Widdiss stated if it is required here it should be required with each DRI. Mr. Wodlinger stated he is afraid this is a distinct possibility. He stated this is the first time in first years, that he knows of, that this type of charge have been made and stated that to his mind they are a slur upon the integrity of some very hard working volunteers and certainly understands resentment however, in order to avoid anyone pointing a finger we will have to suggest the desirability of considering a disclosure form or at least the elements which make the form prior to a hearing on any DRI in the future.

Mr. West stated this is a two-way street and asked if the people that are asking for disclosures from us are also filing disclosures. Mr. Wodlinger stated this is a legitimate question, you are the public official so therefore the burden of disclosure would probably weigh more heavily on Commissioners. He further stated that if among those persons suing the Commission in this instance, it is plain that if some of the motives for the appeal are improper, that can be grounds for dismissal and this inquiry will be made on behalf of the Commission very soon.

Mr. Ewing questioned if conflicts were found, would this be a reason for opening a new hearing. Mr. Wodlinger stated a conflict of interest on 268A has two varieties 1) a commissioner or member of family having a financial interest in the applicant and will benefit if a permit is granted and stated to our knowledge this does not apply. 2) This falls under a catch all clause which urges the appearance of conflict be avoided and the cure for any such appearance, i.e. person having credit card or savings account, is public disclosure, if that disclosure is made that person will be able to vote because by law the disclosure in public removes any implication of improper motive for that Commissioner.

Mr. Ferraguzzi asked if the dollar value is included in these disclosure statements. Mr. Wodlinger answered in the affirmative this is a law that many small communities have found to be extremely burdensome.

Mr. Jason asked if most of this information can be found within the State ethics form which must be filled out when running for office. Mr. Wodlinger stated probably not as this would be information relevant to a particular applicant coming before the Commission. He said to insure rapid processing it would be most helpful if forms could be submitted to staff on Monday.

Mr. McCavitt asked for the definition of financial interest. Mr. Wodlinger stated it would depend on the situation. Mr. Early stated that, if needed, Commissioners can get assistance from Counsel.

Mrs. Eber asked if an Applicant can't meet a condition does this mean the public hearing will have to be reconsidered. Mr. Wodlinger, the decision approval certain specified plans which are referenced by date and number of sheets. A DRI has to be built in accordance with the plans approved by the MVC,. If an applicant is unable to do so or wishes to modify a project as approved he will have to come back to the MVC to get approval of the modification.

Mr. West asked if this would include the access. Mr. Wodlinger answered in the affirmative.

Mr. Evans asked for Mr. Wodlinger's opinion on this. Mr. Wodlinger stated in this instance the plans which have been filed and

approved show one access road which as a result of action last night appears will not be used. Consequently, if the applicant wishes to propose another access, other than the one shown in this plan or make any significant change, Applicant will have to come back to the Commission.

Mr. Ewing asked Mr. Wodlinger to make a statement regarding the Tisbury vote and how this will apply to the MVC. Mr. Wodlinger stated it is up to the applicant, we do not know what he plans to do at this time. If the applicant comes back with a modification it will be up to the MVC to consider the merits of that request, what changes in terms of environmental impacts and what the proposed change would have and to modify or alter the MVC decision as the Commission see best.

Mr. Ewing asked for Mr. Wodlinger's opinion on whether he feels that any new information has been disclosed which would constitute the re-opening of the public hearing. Mr. Wodlinger stated although not an Environmental Consultant he feels the Commission will have to review these reports and decide for themselves.

Mrs. Custer questioned what happens if the Town does not accept gifts of an applicant. Mr. Wodlinger stated it is up to the applicant to persuade the town to take the gifts or come back to the MVC with another proposal as the project would no longer conform with Commission approval.

Mr. Morgan stated he wanted to take this discussion beyond to a future DRI decision having a condition which could not be met by the Applicant and asked if it is the opinion of counsel that this would declare the MVC decision null and void. Mr. Wodlinger stated this would depend. Further any condition explicitly set forth in a DRI which an applicant can not comply with requires him to come back to this Commission.

Mr. West asked what would happen if an applicant wants to comply but no wants to accept. Mr. Wodlinger stated then he can't comply.

Mr. Wodlinger further stated that he would suggest where any material modification of a decision is being made there should be a public hearing.

Mr. Evans asked for clarification of a modification vote. Mr. Wodlinger stated any Commissioner attending the public hearing on modification can vote.

Mr. Young asked for Counsel's opinion regarding a letter to Choate, Hall & Stewart from Roche, Carens & DeGiacomo, dated May 4, 1988 regarding their opinion on EOE findings and MVC re-opening the public hearing. Mr. Wodlinger answered, as I have responded. Mr. Young stated in this particular case that holds true. Mr. Wodlinger stated he is not ready to rule on that at this moment.

Mr. McCavitt asked if Old Holmes Hole Road is a public or private way. Mrs. Eber explained it is not a public way but it is a town owned road. Mr. Wodlinger stated if the town owns the road you would need the town's permission to work on it.

Mr. Ewing asked if this road is not improved then the integrity of the project is diminished, is that correct? Mr. Wodlinger, if the road is not improved then the applicant has not complied with MVC decision. Mr. Ewing then asked if this would constitute reopening of the complete hearing? Mr. Wodlinger, a public hearing would be required and discussion as to the extent to which failure to comply with condition effected other elements of the decision.

Mr. Morgan asked Mr. Wodlinger if he is current in assuming that if any condition can not be met it would make any MVC decision null and void. Mr. Wodlinger answered yes, it is at the applicant's risk and if due to action of another party, public or private, he is unable to comply he is at risk.

Mr. Morgan suggested that in the future the MVC will have to be careful as to how a condition is worded and may have to include a phrase in the event that the condition is not accepted which would protect the MVC decision. Mr. Jason suggested using an escrow. Mr. Wodlinger stated the general point is that MVC must take great care in drafting a decision and applicant must equally be careful to have ducks lined up before they accept a condition which obliges them to get the approval of a third party.

Mr. Early then asked if there were any new questions for Rizzo Associates.

Mr. Evans referencing page 2, paragraph 2, subsection b of the Rizzo letter questioned the exceptions to the so called relative compliance to the FEIR regarding pedestrians asked if this in their judgement were to minor too be of a problem and stated he is unclear of the criteria which would create an adequate report. Mr. Pell stated in response to the Commission's charge to identify if the FEIR addressed the concerns that is not withstanding the relative significance of any of the issues. My professional judgement is that it is a small issue in the concept of the overall mitigation. (this at beginning of page 3 of the Rizzo Report).

Mr. Evans further stated that he gathers Rizzo feels that the impact on moped, bicycles and pedestrians is not significant enough to throw any doubt on the validity of the analysis or the applicant's consultant. Mr. Pell stated this is correct for different reasons pedestrian concern does not have the analysis that is relative to the bicycle and moped situation. He stated that Rizzo Associates did not do any counts on mopeds and bicycles on State Road.

Mr. Evans stated without the methodology and specifics in place he questiones the evaluation of the analysis. Mr. Pell stated the evaluation of methodology is one that could be developed not withstanding the particular area.

Mr. Filley stated he was confused by statements made at the State level regarding EOEA comments vs. EOTC comments and asked for Rizzo's Comments. Mr. Pell he only has seen the letter and does not know to what degree technical analysis was done. Mr. Filley asked if this is a popular step in the analysis. Mr. Pell stated he does not know to what degree they (EOTC) are responsible to analysis to come with comments.

Mr. Filley asked Mr. Wodlinger his opinion on the conflicting comments of EOEA and EOTC regarding what this means. Mr. Wodlinger stated in general the State agency is circulated with the ENF, Draft and Final EIR and are typically invited to make comments and indeed are generally afforded far more latitude in getting their comments in on time. Their comments are considered by the MEPA office with all comments received and the Secretary tests the information in the EIR against comments received. And you will note that the proponent is asked to respond specifically to the comments received on the draft when he files the final and there is a correlation of the two. In so far as a State Agency may possess special expertise the Secretary will

give credence to their comments. If a State Agency makes a comment that the Secretary finds not to bare the particular facts he will not give credence to their comment. The Secretary's function is to test the proposals and the description of Environmental impacts described by the proponents against the comments to make sure no under estimation of expected impacts is occurring. If for instances the Secretary found the traffic analysis in an EIR were not sufficient his certificate would say the EIR is not accepted and no State Agency could issue a permit for the project to go forward. The Secretary certification is a blessing upon an inventory of environmental effects if the inventory has been properly compiled the Secretary certifies to that fact and the State Agencies are free to issue and condition those permits to impose the mitigation steps which either the proponent of Secretary has suggested. So the Secretary's function is to make sure, as a honest broker, that all the information is on the table so the State Agency acts in an informed fashion and I can't speak to what consideration, in this case, the Secretary gave EOTC comment.

Mrs. Eber asked if the Secretary's acceptance of the report necessarily mean the facts are accurate? Mr. Wodlinger stated in essence yes - the Secretary is certifying that the environmental impacts of a proposed project are properly disclosed.

Mr. McCavitt, Commissioner and CZM representative, stated his office is a sophisticated user of the MEPA process and when coastal issues come up they comment in great detail. And it is true that sometimes comments the Secretary does not agree with and he does not include them. So this can happen. In this case I am curious I understand that the Secretary is saying to the MVC, local agency and EOTC through the DPW that if EOTC or DPW it could use mitigative suggestions in this report and it will now have to decide whether to do so or not.

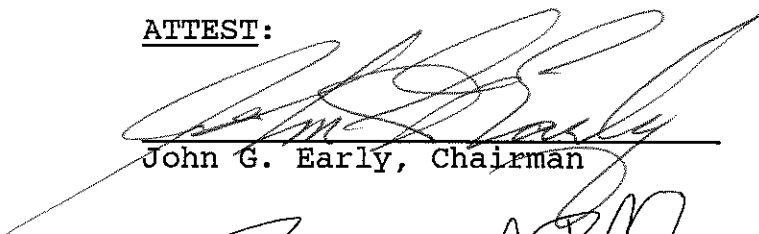
Carol Borer, Executive Director, asked Eric Wodlinger to fully explain what you would expect the Commissioners to put down on paper on the disclosure statement so we can assure they will be submitted Monday morning.

Mr. Wodlinger stated the amount of detail which is required in answer to the inquiries I think has to be answered in a common sense fashion to the extent you had no dealings with the bank I think the simple no is sufficient, to the extent an account or charge account or mortgage from the bank I think we should have the commencement, determination and in the case of any loan we need the approximate or current number, in the case of any relatives who may be employed we should have their degree of relationship. In the case of any contract which anyone may have had with the bank we ought to know when the contract occurred; for what; when terminated, in essence there ought to be enough information provided for anyone consulting the disclosure statement will have full information about your nature of contact with the bank. I realize in many instances this will be burdensome and in many instances essentially ridiculous, but I think rather than having the Commission's integrity impugned we would ask you to make this sacrifice of making this effort.

Mr. Ewing asked Rizzo Associates if during the review of traffic analysis was any indication made as to the effects on Spring Street and if traffic counts had been taken at this loction. Mr. Pell answered in the affirmative.

There being no further discussion Mr. Early closed the meeting at 10:00 P.M.

ATTEST:


John G. Early, Chairman

5/12/88
Date


J. Woodward Filley, Clerk/Treasure

5/12/88
Date

ATTENDANCE

Present: Jason, Lynch, Widdiss, Filley, West, Young, Eber, Ferraguzzi, Evans, Scott, Early, Custer, Wey, Ewing, Lee, Morgan, McCavitt, Harney

Absent: Delaney, Allen, Geller, Harris